

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MATTEW A. GERACI,
Plaintiff,

vs

GARY MOHR, et al.,
Defendants.

Case No. 1:12-cv-771

Beckwith, J.
Litkovitz, M.J.

**REPORT AND
RECOMMENDATION**

On October 9, 2012, a *pro se* complaint was filed on behalf of plaintiff, who was alleged to be an inmate at the Correctional Reception Center (CRC) in Orient, Ohio. (Doc. 1). On November 5, 2012, after a Deficiency Order was issued requiring plaintiff to either pay the \$350 filing fee or file an *in forma pauperis* application, Alonzo Shephard, another inmate at CRC who claims he is plaintiff's "pro se counsel" and "helper," filed a motion on plaintiff's behalf to dismiss the complaint with prejudice followed by a motion for leave to proceed *in forma pauperis*. (Docs. 4, 5). Because it appeared on close review of the complaint that it was not signed by plaintiff and actually may have been prepared and submitted by "pro se counsel & helper" Shephard,¹ the Court issued an Order on November 21, 2012, requiring plaintiff to submit a complaint personally signed by plaintiff himself within thirty (30) days if he intends to proceed with this cause of action. (Doc. 6).

This matter is now before the Court on a motion to dismiss filed in response to the November 21, 2012 Order by "Matthew A. Geraci," an inmate at the North Central Correctional Complex in Marion, Ohio. (Doc. 8). In the motion to dismiss filed on December 3, 2012, Geraci states:

On or about October 9, 2012 an inmate "Shephard" filed a civil complaint in my

¹ It is noted that upon close review of the *in forma pauperis* application, it was also difficult to ascertain who actually signed that application—either plaintiff himself or a "helper" on plaintiff's behalf. (See Doc. 5, p. 7).

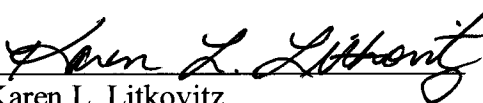
name. If the Court would look on the complaint form – my name is spelled wrong. This is not my document or filing. I request that this Court would dismiss this complaint and waive all cost in this action since I did not file or accept this as my own.

(*Id.*).

In light of the recent pleading, which appears to be have been filed by the actual person named as plaintiff in this action, it is **RECOMMENDED** that the plaintiff's motion to dismiss filed on December 3, 2012 (Doc. 8) be **GRANTED** and the complaint (Doc. 1) **DISMISSED** without prejudice on the grounds that plaintiff himself never intended to initiate the instant action and the inmate "helper," Alonzo Shephard, who prepared and filed the complaint on plaintiff's behalf, had no authority to do so. (*See* Doc. 6) (and cases cited therein). It is **FURTHER RECOMMENDED** that the prior motions to dismiss and for leave to proceed *in forma pauperis* (Docs. 4, 5), which also appear to have been prepared and filed by Shephard, should be **DENIED** as moot.

IT IS SO RECOMMENDED.

Date: 12/6/12


Karen L. Litkovitz
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation ("R&R") within **FOURTEEN (14) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent's objections within **FOURTEEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

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